

such interviews. Monsanto believes that this process can be completed without doing violence to the scheduling order or trial date. Monsanto notes that Defendants have conceded that they had not interviewed certain former employee custodians. Accordingly, Monsanto understands and expects that Defendants will also conduct custodial interviews of all of their former employee custodians.

Third, despite now conceding that they were wrong about the interpretation of the protocol, Defendants' counsel claimed during the meet-and-confer that Monsanto has not followed the protocol and, specifically, that the interviews of the custodians were allegedly inadequate. Defendants presented no evidence whatsoever to support their allegations, but merely speculated that they should have received additional documents. To the best of Monsanto's ability to understand them, Defendants' new allegations appear to be based on yet another misinterpretation of the protocol, which the Court has already rejected. Monsanto vigorously disputes any such allegations.

Fourth, Defendants have claimed that Monsanto should have produced information from a pMON database that Dr. Barry identified at his deposition. Monsanto previously informed the Court that Dr. Barry was interviewed, and confirmed his relevant documents were produced. Although the production of information from databases is outside of the custodial protocol, Monsanto is agreeable to produce certain vector information from the pMON database to Defendants. Although Defendants did not commit to doing so during the meet-and-confer, Monsanto expects that Defendants will reciprocate in producing documents from similar databases to ensure that discovery in this case is not a one-way street.

Fifth, the parties disagree about whether Monsanto must produce documents that the Court previously determined need not be preserved. In its March 18 order, the Court stated: "No independent search of Class I EPSPS enzymes, separate and apart from agreed and ordered search terms associated with identified custodians *with ordered sequences*, will be ordered."

(Dkt. 665 at 37) (emphasis added). Monsanto understands that the “ordered sequences” referenced in the Court’s order refers to the sequences that the Court previously recited, in its preservation order, as the scope of relevant discovery in this case: “SEQ ID NO:3, SEQ ID NO:5, SEQ ID NO:7, SEQ ID NO:70, and the CP4 gene in general.” (Dkt. 312 at 4).

Sixth, despite their efforts, the parties have been unable to reach a consensus about how to proceed with discovery as to the unresolved issues in the instant motion; the other pending discovery motions; and an amended discovery, expert, and dispositive motion schedule. Monsanto has requested a in-person meet and confer to be attended by outside and inhouse counsel for both parties, in an effort to reach agreement regarding the schedule for the resolution of pending discovery motions, and for the completion of factual and expert discovery.

Dated: March 22, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 22nd day of March, 2011, the foregoing was filed electronically with the Clerk of the Court for the United States District Court for the Eastern District of Missouri, Eastern Division, and was served by operation of that Court's electronic filing system, upon the following:

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